

Appl. No. : **10/038,098**
Filed : **October 19, 2001**

REMARKS

In the Office Action mailed on July 19, 2005, the Examiner rejected all of the pending Claims, nos. 1-34, under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. Pub. 2002/0120727 ("Curley et al."). For the reasons set forth below, Applicants request that the rejection be withdrawn.

Claims 1-3, 6-19, 22, 23 and 25-34

With respect to Claims 1-3, 6-19, 22, 23 and 25-34, Applicants submit that the rejection is improper because Curley et al. is not "prior art" to these claims. In support of their position, Applicants are enclosing the sworn Declaration under 37 C.F.R. 1.131 of Noam Fraenkel, one of the named inventors in the present application.

As set forth in the Declaration of Mr. Fraenkel, Mercury Interactive Corporation, the assignee of the present application, publicly launched a software product known as Topaz 2.0 no later than June of 2000. This product, as launched and used in the United States no later than June of 2000, embodied all of the limitations of Claims 1-3, 6-19, 22, 23 and 25-34, and represented an actual reduction to practice of these claims. Because these claims were reduced to practice prior to the December 21, 2000 filing date of Curley et al., Curley et al. is not prior art to any of these claims.

Claims 4, 5, 20 and 21

By the foregoing amendments, Applicants have canceled Claims 4, 5, 20 and 21, rendering the rejections of these claims moot.

Claim 24

With respect to Claim 24, Applicants respectfully submit that the rejection is improper because Curley et al. does not inherently or explicitly disclose "a component that analyzes data collected by the agent component to identify correlations in time between degradations in transaction response times and degradations in the components of such transaction response times, to thereby facilitate identification of causes of end user performance problems." Applicants' representative has carefully reviewed the paragraphs of Curley et al. cited by the Examiner (namely 0133, 0140, 0163, 0215, 0232, 0252 and 0256), and does not believe the feature recited in Claim 24 is disclosed.

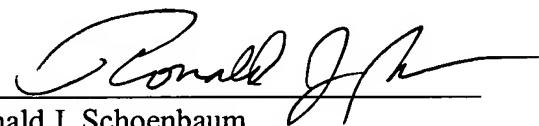
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In view of the foregoing amendment and remarks and the enclosed Declaration, Applicants submit that the application is now in condition for allowance. If, however, any issues remain which can potentially be resolved by telephone, the Examiner is invited to call the undersigned attorney of record at his direct dial number of 949-721-2950.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12 -16 -05

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